

OLC 78-836/5
1 August 1978

MEMORANDUM FOR THE RECORD

SUBJECT: Recent Developments on S. 3314, Federal Tort Claims Act

1. The undersigned met for one hour with Mrs. Ricky Tigert of the Senate Judiciary staff regarding our few remaining problems with the Federal Tort Claims Act Amendments, S. 3314. This bill, if passed, would insulate certain Federal Government employees from suit for torts committed within the scope of their authority.

2. I explained to Mrs. Tigert that it is the position of CIA that to exclude former employees, as the bill now does, from coverage might have a chilling effect on valid overseas operations. It was pointed out that these people were being excluded in an arbitrary manner since their potential for or actual liability would be determined solely by a retirement date. For example, employee A who committed a Constitutional Tort in 1977 and retired in 1980 could be personally liable on the cause of action arising in 1977 if the suit was initiated after his 1980 retirement date; whereas, on the other hand, employee B, having committed a similar tort in 1977 and not retiring prior to initiation of the suit would not be held personally liable.

Although admitting that this might be inequitable, the Committee's position is that, because former employees would not be subject to the bill's disciplinary provisions, personal liability or at least the option thereof must be retained in the case of former employees.

The Department of Justice is fighting this position vigorously with the ACLU and others on the opposing side.

3. A second major point was raised regarding the unfettered and unreviewable discretion of the reviewing body (presumably I. O. B.) in the disciplinary proceeding to allow the complainant the right to examine and cross examine witnesses. I asked if it might not be best to tack on to this our standard "but for" clause limiting this to information or individuals not coming under relevant Executive Order or national security provisions. Mrs. Tigert allowed that this she would consider. I offered to provide draft language and Legislation staff is working on the same. FBI, has, per my request, promised to forcefully raise this oversight with Department of Justice today.

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4. A final issue raised dealt with the, as yet unclear requirement that regulations promulgated by the reviewing body be subject to public notice and Judicial review. According to Mrs. Tigert this would involve simply the publishing of such unclassified rules and regulations in the Federal Register, allowing for public comment via letter. The bill does not make this clear and, therefore, we are preparing amendatory language towards that end.

5. All of the foregoing matters have been discussed with the FBI and relayed to Justice who, on the insistence of this office, has already secured a number of favorable changes in the bill



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